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EXAMINER

SAYALA, CHHAYA D

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed 12/29/2008 have been fully considered but they are not persuasive.

Claims 4-9 are drawn to a feed additive for animals reared for their meat and claim 10 is drawn to a method for raising domestic animals, with the step of providing 5-600 mg/day of the feed additive. Claim 12 is a method of producing flavorful meat with the step of providing the feed additive, as is claim 13.

- The EP patent teaches Grifola in the form of an extract, for feeding animals (chicken or pig) in an amount 0.01 – 20 wt %. The **fungi is said to be an antimicrobial and a growth promoter**.
- The JP '924 patent shows feeding horses the extract or powder of maitake (Grifola) mushroom, which gives **improvement in health condition, as well as acts as an immunostimulant**. The amount is given as 60-525 mg/kg/day. A horse is a domestic animal bred for its meat too.
- Song et al, and Suzuki et al., both teach that the **quality of the meat is improved by feeding such mushrooms**; Song et al. disclose that **Grifola**, one of the mushrooms fed to ducks gave **meats with excellent taste and quality**, while Suzuki et al teach maitake **mushroom improved the quality of cattle overall**, which renders obvious that the meat had good flavor, since good quality meat results in having good flavor.

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- JP '539 teaches adding **yeast in dairy feed to increase animal weight**. Same amounts.
- Protti teaches yeast as **improving health and growth of cattle, horses and chicken**. Same amounts shown.

The above summary with the benefits emphasized, show that claims 4-9 would have been obvious based simply on the benefits. For instance, Grifola is shown to be a growth promoter, yeast is shown to increase animal weight, and based on this alone, it would have been obvious to combine the two, in the amounts shown and claimed herein. With regard to claims 10-12, by providing the composition, i.e. each of the two elements in the same amounts and each for the same benefits, the references render obvious the methods, especially when both elements give the same benefits which are that the weight of the animal is increased, and that the health and growth of the animal is improved. Improving the health of the animal improves the quality of the animal and so also the meat, and improving the health of the animal and its growth, improves its condition.

Applicant's unexpected results discussed at page 5 is said to be surprisingly superior as to the "rate of raising domestic animals". The rate of raising is "superior" by way of a simple step, which is, providing the composition to the animal, which has been shown to be obvious by the above references for the reasons shown above. Claims 10-12 are drawn to "raising domestic animals" by providing the composition. It is the rate of raising that is increased, but this would have been expected given that the references show that the quality and condition of the animal is improved by each of the two elements. Additionally, the response of the last Office action at pages 2-4 is

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incorporated herein. The unexpected results amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/
Primary Examiner, Art Unit 1794**

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